

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA

v.

LAUREN STEVENS,

Defendant

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CRIMINAL NO. 10-cr-694-RWT

**THE PARTIES' JOINT PROPOSED
JURY INSTRUCTIONS**

On behalf of the parties, the United States respectfully submits the following jointly proposed jury instructions. The parties will separately file requests for additional instructions. Of special note, where there is a gap in numbering in these joint proposed instructions, the parties intend to file separate versions of instructions on those matters.¹

¹ There are two exceptions: the parties are intentionally omitting instructions numbered 35 and 59, from both these joint proposed jury instructions and their separate filings.

Counsel for the defendant are directed to review this joint document carefully and note any inadvertent omissions or errors that may have taken place during the process of its preparation.

Dated: April 19, 2011

Respectfully submitted,

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/s/
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I. Preliminary Instructions

The parties respectfully request that, at the opening of trial, the Court provide the following standard instructions from Leonard B. Sand et al., Modern Federal Jury Instructions: Criminal (2010) (“Sand”), without modification:

Proposed Instruction #	Sand Instruction	Instruction name
PR-1	1-1	Instructions at the Beginning of Trial
PR-2	1-2	Contact with Others
PR-3	1-3	Note-Taking by Jury (in accordance with the Court’s standard practice as to whether note-taking is permitted)
PR-6	3-6	Preliminary Instruction – Multiple Counts, One Defendant

The parties also request the following opening instructions, which are modified versions of standard Sand instructions. Text of the language to which the parties agree, along with a redline version to the Sand instruction, follows:

Proposed Instruction #	Instruction name
PR-4	Publicity – Preliminary Instruction
PR-5	Preliminary Instruction – The Charges
PR-7	Preliminary Instruction – Conduct of Counsel

JOINT PROPOSED JURY INSTRUCTION No. PR-4

(Publicity – Preliminary Instruction)

There may be some newspaper attention given to this case, or there may be some talk about it on the radio, television, or the Internet. If there is that kind of media attention during the trial, you must insulate yourselves from all information about this case, except what comes to you in this courtroom through the Rules of Evidence. So, when you leave here and pick up the paper or start reading online, if you see something about the case, you must put the paper down or navigate away from the Internet site right away. Do not read anything about this case.

I will also tell you to avoid listening to or watching any radio, television or Internet discussion of the case.

Sand 2-14 (modified to add reference to the Internet, and to remove the phrase “go to your home,” as many jurors are now able to read online immediately upon leaving Court, through wireless laptops or mobile devices)

Redline of the standard instruction:

There may be some newspaper attention given to this case, or there may be some talk about it on the radio ~~or~~ television, or the Internet. If there is that kind of media attention during the trial, you must insulate yourselves from all information about this case, except what comes to you in this courtroom through the Rules of Evidence. So, when you leave here and ~~go to your home and~~ pick up the paper or start reading online, if you see something about the case, you must put the paper down or navigate away from the Internet site right away. Do not read ~~the article~~ anything about this case.

I will also tell you to avoid listening to or watching any radio-~~or~~ television or Internet discussion of the case.

JOINT PROPOSED JURY INSTRUCTION No. PR-5

(Preliminary Instruction – The Charges)

The Indictment contains six counts. Count One charges the defendant with obstruction of a proceeding, in violation of 18 U.S.C. § 1512. Count Two charges the defendant with falsification and concealment of documents, in violation of 18 U.S.C. § 1519. Counts Three through Six of the indictment charge the defendant with making false statements, in violation of 18 U.S.C. § 1001.

The defendant is not charged with committing any crime other than the offenses contained in the indictment. The defendant has denied that she is guilty of these charges.

Sand 3-2 (modified)

Redline of the standard instruction:

The Indictment contains _____ counts. ~~Counts 1 through _____~~ six counts. Count One
charges the defendant with obstruction of a proceeding, in violation of 18 U.S.C. § 1512. Count
Two charges the defendant with falsification and concealment of documents, in violation of 18
U.S.C. § 1519. Counts Three through Six of the indictment charge the defendant with ~~[general~~
~~description of offense, e.g., bank robbery, mail fraud].~~ Counts _____ through _____ charge the
defendants with ~~[general description of offense, e.g., bank robbery, mail fraud].~~

_____~~I will now read the indictment to you.~~

~~[Read Indictment]~~ making false statements, in violation of 18 U.S.C. § 1001.

The defendant is not charged with committing any crime other than the offenses
contained in the indictment. The defendant has denied that ~~he~~ she is guilty of these charges.

JOINT PROPOSED JURY INSTRUCTION No. PR-7

(Preliminary Instruction – Conduct of Counsel)

Both the prosecutors and the defense attorneys are officers of the Court. They both have important professional roles, and they both are required to adhere to the same standards of honesty and professional conduct.

It is the duty of the attorney for each side of a case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. Counsel also have the right and duty to ask the court to make rulings of law and to request conferences at the side bar out of the hearing of the jury. All those questions of law must be decided by me, the court. You should not show any prejudice against an attorney or his client because the attorney objected to the admissibility of evidence, or asked for a conference out of the hearing of the jury or asked the court for a ruling on the law.

As I already indicated, my rulings on the admissibility of evidence do not indicate any opinion about the weight or effect of such evidence. You are the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

Sand 2-8 (modified).

Redline of the standard instruction:

Both the prosecutors and the defense attorneys are officers of the Court. They both have important professional roles, and they both are required to adhere to the same standards of honesty and professional conduct.

It is the duty of the attorney for each side of a case to object when the other side offers

testimony or other evidence which the attorney believes is not properly admissible. Counsel also have the right and duty to ask the court to make rulings of law and to request conferences at the side bar out of the hearing of the jury. All those questions of law must be decided by me, the court. You should not show any prejudice against an attorney or his client because the attorney objected to the admissibility of evidence, or asked for a conference out of the hearing of the jury or asked the court for a ruling on the law.

As I already indicated, my rulings on the admissibility of evidence do not indicate any opinion about the weight or effect of such evidence. You are the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

II. Instructions at the Close of Trial

The parties respectfully request that, at the close of trial, the Court provide the following Sand instructions, without modification:

Proposed Instruction #	Sand Instruction	Instruction name
1	2-2	Role of the Court
2	2-3	Role of the Jury
3	2-4	Juror Obligations
6	2-11	Improper Considerations
7	2-12	Sympathy
10	4-1	Presumption of Innocence and Burden of Proof
11	4-3	Number of Witnesses and Uncontradicted Testimony
12	5-2	Direct and Circumstantial Evidence
13	6-1	Inference Defined
15	5-3	Questions
17	5-5	Judicial Notice (if applicable)
18	5-6	Stipulation of Facts (if applicable)
19	5-7	Stipulation of Testimony (if applicable)
20	5-12	Charts and Summaries (Admitted as Evidence) (if applicable)
21	5-13	Charts and Summaries (Not Admitted as Evidence) (if applicable)
22	3-1	Indictment Is Not Evidence
23	3-6	Multiple Counts – One Defendant
25	3-12	Variance – Dates
48	5-14	Defendant's Reputation (if applicable)
49	5-15	Opinion of Defendant's Character
50	5-16	Cross-Examination of Witness on Defendant's Character (if applicable)
51	5-19	Admission of Defendant (if applicable)
52	7-1	Witness Credibility – General Instruction
54	7-3	Interest in Outcome
55	7-4 or 5-21	Defendant's Interest if Defendant Testifies -or- Improper Consideration of Defendant's Right Not To Testify
57	7-19	Impeachment by Prior Inconsistent Statement
58	7-21	Expert Witness (Generally)
60	9-3	Right to See Exhibits and Hear Testimony; Communications with Court (in accordance with the Court's standard practices)
61	9-1	Punishment
62	9-5	Selection of a Foreperson
63	9-7	Duty to Consult and Need for Unanimity

In addition, the parties respectfully request the following instructions, which are not taken directly from Sand, at the close of trial. Text of the language to which the parties agree, along with a redline version to a Sand instruction where appropriate and the source of authority for each instruction, follows:

Proposed Instruction #	Instruction name
5	Conduct of Counsel
8	Publicity – Final Charge
9	Jury To Consider Only This Defendant
9.1	Consider Only the Charges (if applicable)
14	State of Mind
16	Testimony, Exhibits, Stipulations, and Judicial Notice in General
24	The Charges
26	Count One: Obstruction of a Proceeding: The Indictment and Statute
27	Count One: Obstruction of a Proceeding: Elements of the Offense
28	Count One: Obstruction of a Proceeding: First Element – Acted “Corruptly”
29	Count One: Obstruction of a Proceeding: Second Element – Obstructs, Influences, or Impedes, or Attempts to Do So
31	Count Two: Falsification/Concealment of Documents: The Indictment and Statute
32	Count Two: Falsification/Concealment of Documents: Elements of the Offense
33	Count Two: Falsification/Concealment of Documents: First Element – Falsification or Concealment of Evidence
36	Count Two: Falsification/Concealment of Documents: Third Element – Matter Within the Jurisdiction of the United States Government
38	Counts Three Through Six: Making False Statements: The Indictment and Statute
39	Counts Three Through Six: Making False Statements: Elements of the Offense
40	Counts Three Through Six: Making False Statements: First Element – Falsified, Concealed or Covered Up or Statement or Representation
41	Counts Three Through Six: Making False Statements: Second Element – Materiality
43	Counts Three Through Six: Making False Statements: Fourth Element – Knowing and Willful Conduct
44	Counts Three Through Six: Making False Statements: Fifth Element – Matter Within the Jurisdiction of the United States Government
46	Good Faith
56	Witnesses Who Are Federal Law Enforcement Officials (if applicable)

JOINT PROPOSED JURY INSTRUCTION No. 5

(Conduct of Counsel)

Both the prosecutors and the defense attorneys are officers of the Court. They both have important professional roles, and they both are required to adhere to the same standards of honesty and professional conduct.

It is the duty of the attorney for each side of a case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. Counsel also have the right and duty to ask the court to make rulings of law and to request conferences at the side bar out of the hearing of the jury. All those questions of law must be decided by me, the court. You should not show any prejudice against an attorney or his client because the attorney objected to the admissibility of evidence, or asked for a conference out of the hearing of the jury or asked the court for a ruling on the law.

As I already indicated, my rulings on the admissibility of evidence do not indicate any opinion about the weight or effect of such evidence. You are the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

Sand 2-8 (modified).

Redline of the standard instruction:

Both the prosecutors and the defense attorneys are officers of the Court. They both have important professional roles, and they both are required to adhere to the same standards of honesty and professional conduct.

It is the duty of the attorney for each side of a case to object when the other side offers

testimony or other evidence which the attorney believes is not properly admissible. Counsel also have the right and duty to ask the court to make rulings of law and to request conferences at the side bar out of the hearing of the jury. All those questions of law must be decided by me, the court. You should not show any prejudice against an attorney or his client because the attorney objected to the admissibility of evidence, or asked for a conference out of the hearing of the jury or asked the court for a ruling on the law.

As I already indicated, my rulings on the admissibility of evidence do not indicate any opinion about the weight or effect of such evidence. You are the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

JOINT PROPOSED JURY INSTRUCTION No. 8

(Publicity – Final Charge)

Your verdict must be based solely on the evidence presented in this courtroom in accordance with my instructions. You must completely disregard any report which you have read on the Internet or in a newspaper, seen on television, or heard on the radio. Indeed, it would be unfair to consider such reports, since they are not evidence and the parties have no opportunity of contradicting their accuracy or otherwise explaining them away. In short, it would be a violation of your oath as jurors to allow yourselves to be influenced in any manner by such publicity.

Sand 2-17 (modified to add reference to the Internet)

Redline of the standard instruction:

Your verdict must be based solely on the evidence presented in this courtroom in accordance with my instructions. You must completely disregard any report which you have read ~~in the press~~ Internet or in a newspaper, seen on television, or heard on the radio. Indeed, it would be unfair to consider such reports, since they are not evidence and the parties have no opportunity of contradicting their accuracy or otherwise explaining them away. In short, it would be a violation of your oath as jurors to allow yourselves to be influenced in any manner by such publicity.

JOINT PROPOSED JURY INSTRUCTION No. 9

(Jury To Consider Only This Defendant)

You are about to be asked to decide whether or not the government has proven beyond a reasonable doubt the guilt of this defendant. You are not being asked whether any other person, company or entity has been proven guilty. Your verdict should be based solely upon the evidence or lack of evidence as to this defendant, in accordance with my instructions and without regard to whether the guilt of other people has or has not been proven.

Sand 2-18 (modified to refer to companies and entities)

Redline of the standard instruction:

You are about to be asked to decide whether or not the government has proven beyond a reasonable doubt the guilt of this defendant. You are not being asked whether any other person, company or entity has been proven guilty. Your verdict should be based solely upon the evidence or lack of evidence as to this defendant, in accordance with my instructions and without regard to whether the guilt of other people has or has not been proven.

JOINT PROPOSED JURY INSTRUCTION No. 9.1

(Consider Only the Charges (if applicable))

The defendant is not charged with committing any crime other than the offenses contained in the indictment. You may have heard evidence of other acts allegedly committed by other persons or entities. When that evidence was introduced, I instructed you that it was to be considered by you solely for a limited purpose. I want to emphasize to you that you are not to consider that evidence for any other purpose and you are only to return a verdict as to the charges contained in the indictment.

Sand 3-3 (modified to refer to the bad acts of third parties, and to exclude a reference to an instruction not included in these proposed instructions)

Redline to the standard instruction:

The defendant is not charged with committing any crime other than the offenses contained in the indictment. You may have heard evidence of other acts allegedly committed by ~~the defendant~~ other persons or entities. When that evidence was introduced, I instructed you that it was to be considered by you solely for a limited purpose. ~~I will explain that limited purpose again in a moment. But~~ I want to emphasize to you ~~now~~ that you are not to consider that evidence for any other purpose and you are only to return a verdict as to the charges contained in the indictment.

JOINT PROPOSED JURY INSTRUCTION No. 14

(State of Mind)

Knowledge, willfulness, intent, and whether someone acted corruptly all involve the state of a person's mind. It has often been said to juries that the state of one's mind is a fact as much as the state of his digestion. Accordingly, this is a fact you are called upon to decide.

Medical science has not yet devised an instrument which can record what was in one's mind in the distant past. Rarely is direct proof available to establish the state of one's mind. This may be inferred from what she says or does: her words, her actions, and her conduct, as of the time of the occurrence of certain events.

The intent with which an act is done is often more clearly and conclusively shown by the act itself, or by a series of acts, than by words or explanations of the act uttered long after its occurrence. Accordingly, intent, willfulness, knowledge, and whether a defendant acted corruptly are usually established by surrounding facts and circumstances as of the time the acts in question occurred, or the events took place, and the reasonable inferences to be drawn from them.

Sand 6-17 (modified to reference the "acting corruptly" element of § 1512)

Redline of the standard instruction:

Knowledge, willfulness (~~or malice~~) and intent, and the question of whether someone acted corruptly all involve the state of a person's mind. It has often been said to juries that the state of one's mind is a fact as much as the state of his digestion. Accordingly, this is a fact you are called upon to decide.

Medical science has not yet devised an instrument which can record what was in one's mind in the distant past. Rarely is direct proof available to establish the state of one's mind. This may be inferred from what ~~he~~she says or does: ~~his~~her words, ~~his~~her actions, and ~~his~~her conduct, as of the time of the occurrence of certain events.

The intent with which an act is done is often more clearly and conclusively shown by the act itself, or by a series of acts, than by words or explanations of the act uttered long after its occurrence. Accordingly, intent, willfulness (~~or malice~~) and knowledge, and whether a defendant acted corruptly are usually established by surrounding facts and circumstances as of the time the acts in question occurred, or the events took place, and the reasonable inferences to be drawn from them.

JOINT PROPOSED JURY INSTRUCTION No. 16

(Testimony, Exhibits, Stipulations, and Judicial Notice in General)

The evidence in this case consists of the sworn testimony of the witnesses, the exhibits received in evidence, stipulations and judicially noticed facts. Exhibits which have been marked for identification but not received may not be considered by you as evidence. Only those exhibits received may be considered as evidence. Similarly, you are to disregard any testimony when I have ordered it to be stricken. As I indicated before, only the witness' answers are evidence and you are not to consider a question as evidence. Similarly, statements by counsel are not evidence.

You should consider the evidence in light of your own common sense and experience, and you may draw reasonable inferences from the evidence.

With respect to certain documents, I admitted into evidence only those portions that are relevant to the charges against the defendant. You are not to speculate about the contents of those portions of the exhibits that were not admitted into evidence.

Anything you may have seen or heard about this case outside the courtroom is not evidence and must be entirely disregarded.

Sand 5-4 (modified)

Redline of the standard instruction:

The evidence in this case consists of the sworn testimony of the witnesses, the exhibits received in evidence, stipulations and judicially noticed facts. Exhibits which have been marked for identification but not received may not be considered by you as evidence. Only those exhibits

received may be considered as evidence. Similarly, you are to disregard any testimony when I have ordered it to be stricken. As I indicated before, only the witness' answers are evidence and you are not to consider a question as evidence. Similarly, statements by counsel are not evidence.

You should consider the evidence in light of your own common sense and experience, and you may draw reasonable inferences from the evidence.

With respect to certain documents, I admitted into evidence only those portions that are relevant to the charges against the defendant. You are not to speculate about the contents of those portions of the exhibits that were not admitted into evidence.

Anything you may have seen or heard about this case outside the courtroom is not evidence and must be entirely disregarded.

JOINT PROPOSED JURY INSTRUCTION No. 24

(The Charges)

The Indictment contains six counts. Count One charges the defendant with obstruction of a proceeding, in violation of 18 U.S.C. § 1512. Count Two charges the defendant with falsification and concealment of documents, in violation of 18 U.S.C. § 1519. Counts Three through Six of the indictment charge the defendant with making false statements, in violation of 18 U.S.C. § 1001.²

The defendant has denied that she is guilty of these charges.

Sand 3-2 (modified)

Redline of the standard instruction:

The Indictment contains _____ counts. ~~Counts 1 through _____~~ six counts. Count One
charges the defendant with obstruction of a proceeding, in violation of 18 U.S.C. § 1512. Count
Two charges the defendant with falsification and concealment of documents, in violation of 18
U.S.C. § 1519. Counts Three through Six of the indictment charge the defendant with ~~[general~~
~~description of offense, e.g., bank robbery, mail fraud].~~ Counts _____ through _____ charge the
defendants with ~~[general description of offense, e.g., bank robbery, mail fraud].~~
_____. I will now read the indictment to you.
~~[Read Indictment]~~ making false statements, in violation of 18 U.S.C. § 1001.

² In the event the Court declines to give the jury the government's requested instruction G-9.1 ("Consider Only the Charges"), the parties agree that the following text should be inserted: "The defendant is not charged with committing any crime other than the offenses contained in the indictment." This language is taken directly from Sand 3-3.

The defendant has denied that ~~he~~she is guilty of these charges.

JOINT PROPOSED JURY INSTRUCTION No. 26

(Count One: Obstruction of a Proceeding: The Indictment and Statute)

Count One charges the defendant with obstructing and attempting to obstruct an official proceeding. The indictment reads:

[Read Indictment for Count One]

The relevant statute on this subject is 18 U.S.C. § 1512(c)(2). It provides: “Whoever corruptly . . . obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be [guilty of a crime].”

Sand 46-7 (modified); 18 U.S.C. § 1512(c)(2).

Redline of the standard instruction:

~~Count One charges the defendant has been charged in the indictment with obstructing and endeavoring attempting to obstruct the due administration of an official proceedings pending before [insert name of agency].~~

———The indictment reads:

~~[Read Indictment for Count One]~~

The relevant statute on this subject is 18 U.S.C. § ~~1505, which~~ 1512(c)(2). It provides: ~~Whoever~~ “Whoever corruptly, or by threats of force, or by threatening letter or communication influences, obstructs, or impedes, or endeavors to influence, obstruct or impede the due and proper administration of law under which any proceeding is being held before any department or agency of the United States ... [shall be] . . . obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be [guilty of a crime].”

JOINT PROPOSED JURY INSTRUCTION No. 27

(Count One: Obstruction of a Proceeding – Elements of the Offense)

To satisfy its burden of proof as to Count One, the government must prove beyond a reasonable doubt that, on or about the dates specified in the indictment, the defendant:

- (1) corruptly
- (2) obstructed, influenced or impeded (or attempted to obstruct, influence, or impede)
- (3) an official proceeding,

in the manner set out in Count One of the Indictment.

If you, the jury, find beyond a reasonable doubt from the evidence in the case that the government has proved each of the foregoing elements as charged in the indictment, then proof of the crime is complete and you may find the defendant guilty. If, on the other hand, you have a reasonable doubt after careful consideration of all of the evidence as to any of the elements, then it is your duty to acquit.

Sand 3-10; 18 U.S.C. § 1512(c)(2)

Redline of the standard instruction:

~~In order to~~ To establish the crime charged in the indictment, you must find that the
~~government has sustained~~ satisfy its burden of proving each of proof as to Count One, the
following elements government must prove beyond a reasonable doubt:

First,

Second,

Third,

Fourth,

that, on or about the dates specified in the indictment, the defendant:

(1) corruptly

(2) obstructed, influenced or impeded (or attempted to obstruct, influence, or impede)

(3) an official proceeding,

in the manner set out in Count One of the Indictment.

If you, the jury, find beyond a reasonable doubt from the evidence in the case that the government has proved each of the foregoing elements as charged in the indictment, then proof of the crime charged is complete and you may find the defendant guilty. If, on the other hand, you have a reasonable doubt after careful consideration of all of the evidence as to any of the elements, then it is your duty to acquit.

JOINT PROPOSED JURY INSTRUCTION No. 28

(Count One: Obstruction of a Proceeding: First Element – Acted “Corruptly”)

The first element the government must prove beyond a reasonable doubt for Count One is that the defendant acted corruptly.

To act “corruptly,” as used in these instructions, means that the defendant acted with consciousness of wrongdoing, that is, with the improper purpose of wrongfully obstructing, influencing, or impeding an official proceeding. “Corruptly” does not include acting by accident or mistake.

See United States v. Matthews, 505 F.3d 698, 706 (7th Cir. 2007); *United States v. Johnson*, 553 F. Supp. 2d 582, 626 (E.D. Va. 2008) (citing, in a bench trial for a § 1512(c) violation, to *Matthews* for the definition of “corruptly”).

JOINT PROPOSED JURY INSTRUCTION No. 29

(Count One: Obstruction of a Proceeding: Second Element – Obstructs, Influences, or Impedes,
or Attempts to Do So)

The second element the government must prove beyond a reasonable doubt for Count One is that the defendant did obstruct, influence, or impede an official proceeding, or attempt to do so.

It is not necessary for the government to prove that the defendant was successful in obstructing, influencing, or impeding the proceeding. An attempt to corruptly obstruct an official proceeding by one of the means charged in Count One is sufficient.

Count One alleges that the defendant **[quote Count One of the indictment]**. Under this element, it is essential that the government prove beyond a reasonable doubt that the defendant knowingly **[paraphrase Count One allegation-e.g., made false statements, etc.]**, in a corrupt attempt to obstruct the agency proceedings by **[e.g., making such false statements, etc.]**.³

Sand 46-12; 18 U.S.C. § 1512(c)(2); Count One of the Indictment

Redline of the standard instruction:

The ~~final~~second element the government must prove beyond a reasonable doubt for
Count One is that the defendant did ~~corruptly obstruct or impede, or endeavor to obstruct or~~
~~impede the proceeding (or [insert name] in the discharge of his duties).~~

³ The parties reserve the opportunity to propose specific paraphrasing language at the close of trial.

~~As I explained earlier, the word corruptly means simply having the improper motive or purpose of obstructing justice.~~

~~As I also told you, success of the endeavor is not an element of the crime. The term endeavor is designed to reach all conduct which is aimed at influencing, intimidating and impeding the proceedings. Thus, it is sufficient to satisfy this element if you find, influence, or impede an official proceeding, or attempt to do so.~~

It is not necessary for the government to prove that the defendant ~~made any effort or did any act for the purpose of~~ was successful in obstructing, influencing, or impeding the proceeding.

~~(If applicable:~~ An attempt to corruptly obstruct an official proceeding by one of the means charged in Count One is sufficient.

Count One alleges that the defendant [quote Count One of the indictment]. Under this element, it is essential that the government prove beyond a reasonable doubt that the defendant knowingly ~~gave false answers in his testimony before the agency, and that he did so in a corrupt endeavor~~ [paraphrase Count One allegation-e.g., made false statements, etc.], in a corrupt attempt to obstruct the agency proceedings by giving [e.g., making such false testimony statements, etc.)].

JOINT PROPOSED JURY INSTRUCTION No. 31

(Count Two: Falsification/Concealment of Documents: The Indictment and Statute)

Count Two charges the defendant with the falsification or concealment of documents.

The Indictment reads:

[Read Indictment for Count Two]

The relevant statute on this subject is 18 U.S.C. § 1519. It provides in pertinent part:

“Whoever knowingly . . . conceals , covers up, falsifies . . . any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States, or in relation to and contemplation of any such matter. . . shall be [guilty of a crime].”

18 U.S.C. § 1519

JOINT PROPOSED JURY INSTRUCTION No. 32

(Count Two: Falsification/Concealment of Documents: Elements of the Offense)

To satisfy its burden of proof as to Count Two, the government must prove the following elements beyond a reasonable doubt:

(1) That, on or about the dates specified in the indictment, the defendant altered, concealed, covered up, or falsified any record, document, or tangible object, as set out in Count Two of the indictment;

(2) That she did so knowingly, with the intent to impede, obstruct or influence an investigation or the proper administration of a matter or in relation to or in contemplation of any such matter or investigation; and

(3) That the investigation or the matter be within the jurisdiction of any department or agency of the United States.

If you, the jury, find beyond a reasonable doubt from the evidence in the case that the government has proved each of the foregoing elements as charged in the indictment, then proof of the crime is complete and you may find the defendant guilty. If, on the other hand, you have a reasonable doubt after careful consideration of all of the evidence as to any of the elements, then it is your duty to acquit.

18 U.S.C. § 1519; 3/23/11 Mem. Op. at 5 (ECF No. 132) (“[T]he mens rea is ‘knowingly . . . with intent to impede, obstruct or influence . . . ’ ”); Sand 3-10 (reasonable doubt paragraph) (unmodified).

JOINT PROPOSED JURY INSTRUCTION No. 33

(Count Two: Falsification/Concealment of Documents: First Element – Falsification or
Concealment of Evidence)

To satisfy its burden of proof as to Count Two, the first element that the government must prove beyond a reasonable doubt is that the defendant altered, falsified, concealed or covered up a document, record or tangible object. To “falsify” means to make an untrue statement which is untrue at the time made and is known to be untrue at the time made. To “conceal” means to withhold from another. It requires some act to prevent detection of some fact the defendant was required to reveal. To “cover up” means to hide from another.

Sand 36-4 (modified)

Redline of the standard instruction:

~~The~~ To satisfy its burden of proof as to Count Two, the first element that the government must prove beyond a reasonable doubt is that the defendant falsified ~~(or, concealed or covered up) a fact~~ document, record or tangible object. ~~These words almost define themselves.~~ To “falsify” “falsify” means to make an untrue statement which is untrue at the time made and is known to be untrue at the time made. To “conceal” “conceal” means to withhold from another. It requires some act to prevent detection of some fact the defendant was required to reveal. To “cover up” “cover up” means to hide from another.

JOINT PROPOSED JURY INSTRUCTION No. 36

(Count Two: Falsification/Concealment of Documents: Third Element – Matter Within the
Jurisdiction of the United States Government)

The third element the government must prove beyond a reasonable doubt for Count Two is that the investigation must be a matter within the jurisdiction of the government of the United States. I charge you that the United States Food and Drug Administration (FDA), the United States Department of Health and Human Services, and the United States Department of Justice are all agencies or portions of agencies of the United States government.

To be within the jurisdiction of a department or agency of the United States government means that the statement must concern an authorized function of that department or agency.

18 U.S.C. § 1519; *United States v. Ionia Management S.A.*, 526 F. Supp. 2d 319, 329-30 (D. Conn. 2007) (“ ‘[T]he phrase “within the jurisdiction” merely differentiates the official, authorized functions of an agency or department from matters peripheral to the business of that body.’ ” (quoting *United States v. Rodgers*, 466 U.S. 475, 477 (1984)).

JOINT PROPOSED JURY INSTRUCTION No. 38

(Counts Three through Six: Making False Statements: The Indictment and Statute)

Counts Three through Six of the indictment charge the defendant with knowingly and willfully making false statements to the Federal Food and Drug Administration (FDA), an agency of the United States. The Indictment reads:

[Read Counts Three through Six of the Indictment]

The relevant statute on this subject is 18 U.S.C. § 1001. It provides in relevant part: “[W]hoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully – (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; [or] (2) makes any materially false, fictitious or fraudulent statement or representation, shall be [guilty of a crime].”

Sand 36-1 (as modified)

Redline of the standard instruction:

~~Counts Three through Six of the indictment charge~~ the defendant ~~is charged~~ with knowingly and willfully making false statements to ~~_____~~ the Federal Food and Drug Administration (FDA), ~~a department/agency~~ agency of the United States]. The indictment reads as follows:

~~_____~~
[Read Counts Three through Six of the Indictment]

~~_____ You will observe that the indictment charges that the defendant knowingly and willfully (select appropriate charge: falsified, concealed or covered up a material fact, by trick, scheme or device, or made a materially false, fictitious or fraudulent statement or representation, or used a~~

~~false writing or document, knowing the same to contain a materially false, fictitious or fraudulent statement or entry).~~

~~— In this case, the government contends that the evidence shows that the defendant [choose one, or in the alternative, more than one theory].~~

The relevant statute on this subject is section 18 U.S.C. § 1001(a) of Title 18 of the United States Code. It provides in relevant part:

“[W]hoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—

—(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; [or]

(2) makes any materially false, fictitious or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry

shall be [guilty of a crime].”

JOINT PROPOSED JURY INSTRUCTION No. 39

(Counts Three Through Six: Making False Statements: Elements of the Offense)

To satisfy its burden of proof as to Counts Three through Six, the government must prove beyond a reasonable doubt that:

First, on or about the date specified in the indictment, the defendant falsified, concealed or covered up a material fact, or made a statement or misrepresentation;

Second, the fact falsified, concealed or covered up, or the statement or representation, was material;

Third, the defendant falsified, concealed or covered up the material fact by trick, scheme, or device, or the material statement or representation was false, fictitious or fraudulent;

Fourth, the defendant acted knowingly and willfully;

Fifth, the falsification, concealment or coverup, or the statement or representation, was with respect to a matter within the jurisdiction of the government of the United States.

For each count of Counts Three through Six, if you, the jury, find beyond a reasonable doubt from the evidence in the case that the government has proved each of the foregoing elements as charged in that count of the indictment, then proof of the crime charged is complete and you may find the defendant guilty on that count. If, on the other hand, you have a reasonable doubt after careful consideration of all of the evidence as to any of the elements for that count, then it is your duty to acquit on that count.

Sand 36-3, 36-9 (modified to combine)

Redline to standard instructions:

Sand 36-3

~~In order~~ To satisfy its burden of proof as to prove the defendant guilty of the crime
~~charged~~ Counts Three through Six, the government must prove beyond a reasonable doubt that:

First, ~~that~~ on or about the date specified in the indictment, the defendant falsified ~~(or,~~
concealed or covered up) a material fact, or made a statement or misrepresentation;

Second, ~~that~~ the fact falsified ~~(or,~~ concealed or covered up) or the statement or
representation, was material;

Third, ~~that~~ the defendant ~~did so~~ falsified, concealed or covered up the material fact by trick,
scheme or device;

~~Fourth, that,~~ or device, or the material statement or representation was false, fictitious or
fraudulent;

Fourth, the defendant acted knowingly and willfully; ~~and~~

Fifth, ~~that~~ the falsification, concealment or coverup, or the statement or representation,
was with respect to a matter within the jurisdiction of the government of the United States ~~(if~~
~~applicable: or that federal funds were involved).~~

.

For each count of Counts Three through Six, if you, the jury, find beyond a reasonable
doubt from the evidence in the case that the government has proved each of the foregoing
elements as charged in that count of the indictment, then proof of the crime charged is complete
and you may find the defendant guilty on that count. If, on the other hand, you have a
reasonable doubt after careful consideration of all of the evidence as to any of the elements for
that count, then it is your duty to acquit on that count.

Sand 36-9

~~In order~~ To satisfy its burden of proof as to prove the defendant guilty of the crime charged Counts Three through Six, the government must ~~establish~~ prove beyond a reasonable doubt that:

First, on or about the date specified in the indictment, the defendant ~~made a~~ falsified, concealed or covered up a material fact, or made a statement or misrepresentation;

Second, the fact falsified, concealed or covered up, or the statement or representation;

~~Second, that this statement or representation was material;~~

Third, the defendant falsified, concealed or covered up the material fact by trick, scheme, or device, or the material statement or representation was false, fictitious or fraudulent;

Fourth, the ~~false, fictitious or fraudulent statement was made~~ defendant acted knowingly and willfully; ~~and~~

Fifth, the falsification, concealment or coverup, or the statement or representation, was made ~~in~~ with respect to a matter within the jurisdiction of the government of the United States ~~(or federal funds were involved).~~

.

For each count of Counts Three through Six, if you, the jury, find beyond a reasonable doubt from the evidence in the case that the government has proved each of the foregoing elements as charged in that count of the indictment, then proof of the crime charged is complete and you may find the defendant guilty on that count. If, on the other hand, you have a reasonable doubt after careful consideration of all of the evidence as to any of the elements for that count, then it is your duty to acquit on that count.

JOINT PROPOSED JURY INSTRUCTION No. 40

(Counts Three Through Six: Making False Statements: First Element – Falsified, Concealed or Covered Up or Statement or Representation)

The first element that the government must prove beyond a reasonable doubt for Counts Three through Six is that the defendant either:

- (1) falsified, or concealed or covered up a fact, or
- (2) made a statement or representation.

To "falsify" means to make an untrue statement which is untrue at the time made and is known to be untrue at the time made. To "conceal" means to withhold from another. It requires some act to prevent detection of some fact the defendant was required to reveal. To "cover up" means to hide from another.

With respect to statements, the government need not prove that the defendant physically made or otherwise personally prepared the statement in question. It is sufficient if the defendant caused the statement charged in the indictment to have been made. Under this statute, there is no distinction between written and oral statements.

Sand 36-4, 36-10 (modified to combine)

Redline to standard instructions:

Sand 36-4

The first element that the government must prove beyond a reasonable doubt for Counts Three through Six is that the defendant either:

(1) falsified (or concealed or covered up) a fact. These words almost define themselves.

or

(2) made a statement or representation.-

To "falsify" means to make an untrue statement which is untrue at the time made and is known to be untrue at the time made. To "conceal" means to withhold from another. It requires some act to prevent detection of some fact the defendant was required to reveal. To "cover up" means to hide from another.

With respect to statements, the government need not prove that the defendant physically made or otherwise personally prepared the statement in question. It is sufficient if defendant caused the statement charged in the indictment to have been made. Under this statute, there is no distinction between written and oral statements.

Sand 36-10

The first element that the government must prove beyond a reasonable doubt for Counts Three through Six is that the defendant either:

(1) falsified, or concealed or covered up a fact, or

(2) made a statement or representation. In this regard

To "falsify" means to make an untrue statement which is untrue at the time made and is known to be untrue at the time made. To "conceal" means to withhold from another. It requires some act to prevent detection of some fact the defendant was required to reveal. To "cover up" means to hide from another.

With respect to statements, the government need not prove that the defendant physically made or otherwise personally prepared the statement in question. It is sufficient if defendant

caused the statement charged in the indictment to have been made. Under this statute, there is no distinction between written and oral statements.

JOINT PROPOSED JURY INSTRUCTION No. 41

(Counts Three Through Six: Making False Statements: Second Element – Materiality)

The second element the government must prove beyond a reasonable doubt for Counts Three through Six is that either:

- (1) the fact falsified, concealed or covered up was material; or
- (2) the statement or representation was material.

A fact is material if it was capable of influencing the government's decisions or activities. However, proof of actual reliance on the statement by the government is not required.

Sand 36-5 and 36-11 (modified to combine)

Redline of the standard instructions:

Sand 36-5

The second element the government must prove beyond a reasonable doubt for Counts Three through Six is that either:

- (1) the fact falsified ~~(or,~~ concealed or covered up was material; or
- (2) the statement or representation was material.

~~_____~~ A fact is material if it was capable of influencing the government's decisions or activities. However, proof of actual reliance on the statement by the government is not required.

Sand 36-11

The second element the government must prove beyond a reasonable doubt for Counts Three through Six is that ~~the defendant's~~ either:

(1) the fact falsified, concealed or covered up was material; or

(2) the statement or representation was material.

——— A fact is material if it was capable of influencing the government's¹⁵ decisions or activities. However, proof of actual reliance on the statement by the government is not required.

JOINT PROPOSED JURY INSTRUCTION No. 43

(Counts Three Through Six: Making False Statements: Fourth Element – Knowing and Willful Conduct)

The fourth element which the government must prove beyond a reasonable doubt for Counts Three through Six is that the defendant acted knowingly and willfully.

An act is done knowingly if it is done purposely and voluntarily, as opposed to mistakenly or accidentally.

An act is done willfully if it is done with an intention to do something the law forbids, a bad purpose to disobey the law or, with respect to concealment, with specific intent to fail to do something the law requires to be done. The defendant's conduct was not "willful" if it was due to negligence, inadvertence, or mistake.

Sand 3A-3 and 36-13 (modified to combine portions)

Redline of the standard instructions:

Sand 3A-3

~~You have been instructed that in order to sustain its burden of proof~~The fourth element
~~which~~ the government must prove beyond a reasonable doubt for Counts Three through Six is
that the defendant acted willfully. ~~"Willfully" means to act with knowledge that one's conduct is~~
~~unlawful and with the intent~~knowingly and willfully.

An act is done knowingly if it is done purposely and voluntarily, as opposed to
mistakenly or accidentally.

An act is done willfully if it is done with an intention to do something the law forbids,

~~that is to say with the~~a bad purpose to disobey or to disregard the law.

~~— The defendant's~~the law or, with respect to concealment, with specific intent to fail to do
something the law requires to be done. The defendant's conduct was not "~~willful~~""willful" if it
was due to negligence, inadvertence, or mistake. ~~(If the defendant asserts a good faith~~
~~misunderstanding of the law defense: or was the result of a good faith misunderstanding of the~~
~~requirement of the law. In this connection, it is for you to decide whether the defendant acted in~~
~~good faith, that is, whether he sincerely misunderstood the requirements of the law, or whether~~
~~he knew what he was required to do and deliberately did not do so.)~~

Sand 36-13

The fourth element which the government must prove beyond a reasonable doubt for
Counts Three through Six is that the defendant acted knowingly and willfully. =

An act is done knowingly if it is done purposely and voluntarily, as opposed to
mistakenly or accidentally. =

An act is done willfully if it is done with an intention to do something the law forbids,
~~that is, with a bad purpose to disobey the law~~ or, with respect to concealment, with specific
intent to fail to do something the law requires to be done.

The defendant's conduct was not "willful" if it was due to negligence, inadvertence, or mistake.

JOINT PROPOSED JURY INSTRUCTION No. 44

(Counts Three Through Six: Making False Statements: Fifth Element – Matter Within the
Jurisdiction of the United States Government)

The fifth element which the government must prove beyond a reasonable doubt for Counts Three through Six is that the statement, representation or falsification be made with regard to a matter within the jurisdiction of the government of the United States. I charge you that the United States Department of Health and Human Services, the United States Food and Drug Administration (FDA) and the United States Department of Justice are agencies or portions of agencies of the United States government.

There is no requirement that the statement, representation or falsification be actually directed to or given to the federal agency. All that is necessary is that you find that it was contemplated that the document or statement was to be utilized in a matter which was within the jurisdiction of the government of the United States. To be within the jurisdiction of a department or agency of the United States government means that the statement must concern an authorized function of that department or agency.

In this regard, it is not necessary for the government to prove that the defendant had actual knowledge that the statement, representation or falsification was to be used in a matter which was within the jurisdiction of the government of the United States. It is sufficient to satisfy this element if you find that the false statement was made with regard to a matter within the jurisdiction of the government of the United States.

Sand 36-14 (modified to identify agencies and include falsification)

Redline of the standard instruction:

As I have told you, ~~the~~ The fifth element with respect to each count which the government
must prove beyond a reasonable doubt for Counts Three through Six is that the statement ~~(or~~
~~representation)~~ or falsification be made with regard to a matter within the jurisdiction of the
government of the United States. I charge you that the ~~[insert name of department]~~ is a
~~department~~ United States Department of Health and Human Services, the United States Food and
Drug Administration (FDA) and the United States Department of Justice are agencies or portions
of agencies of the United States government.

There is no requirement that the statement, representation or falsification be actually
directed to or given to ~~[insert name of department]~~ the federal agency. All that is necessary is
that you find that it was contemplated that the document or statement was to be utilized in a
matter which was within the jurisdiction of the government of the United States ~~(if applicable:~~
~~or that federal funds were involved)~~. To be within the jurisdiction of a department or agency of
the United States government means that the statement must concern an authorized function of
that department or agency.

(In this regard, it is not necessary for the government to prove that the defendant had
actual knowledge that ~~(e.g., the false statement)~~, representation or falsification was to be
~~utilized~~ used in a matter which was within the jurisdiction of the government of the United States.

It is sufficient to satisfy this element if you find that the false statement was made with regard to
a matter within the jurisdiction of the government of the United States.)

JOINT PROPOSED JURY INSTRUCTION No. 46

(Good Faith)

Good faith is an absolute defense to the charges in this case. A statement made with good faith belief in its accuracy does not amount to a false statement and is not a crime. This is so even if the statement is, in fact, erroneous.

The burden of establishing lack of good faith and criminal intent rests upon the prosecution. A defendant is under no burden to prove his good faith; rather, the prosecution must prove bad faith or knowledge of falsity beyond a reasonable doubt.

Sand 8-1 (modified to delete material irrelevant to this case)

Redline of the standard instruction:

Good faith is an absolute defense to the charges in this case.

~~————(If false statement charged: A statement made with good faith belief in its accuracy does not amount to a false statement and is not a crime. This is so even if the statement is, in fact, erroneous.)~~

~~————(If fraud charged : If the defendant believed in good faith that he was acting properly, even if he was mistaken in that belief, and even if others were injured by his conduct, there would be no crime.)~~

~~————(If tax evasion charged: If the defendant in good faith believed that he paid all of the taxes he owed, he cannot be guilty of criminal intent to evade taxes. Therefore, if you find that the defendant honestly believed that he owed no taxes, even if that belief was unreasonable or irrational, then you should find him not guilty. However, you may consider whether the~~

~~defendant's belief was actually reasonable as a factor in deciding whether he held that belief in good faith. It should also be pointed out that neither the defendant's disagreement with the law nor his own belief that the law is unconstitutional, no matter how earnestly that belief is held, constitutes a defense of good faith misunderstanding or mistake. It is the duty of all citizens to obey the law regardless of whether they agree with it.)~~

The burden of establishing lack of good faith and criminal intent rests upon the prosecution. A defendant is under no burden to prove his good faith; rather, the prosecution must prove bad faith or knowledge of falsity beyond a reasonable doubt.

JOINT PROPOSED JURY INSTRUCTION No. 56

(Witnesses Who Are Federal Law Enforcement Officials (if applicable))

You have heard the testimony of **[an FBI agent and/or official(s) of the Food and Drug Administration]**. The fact that a witness may be employed by the federal government as an investigator or an official of a federal agency does not mean that his testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness.

At the same time, it is quite legitimate for defense counsel to try to attack the credibility of such a witness on the grounds that his or her testimony may be colored by a personal or professional interest in the outcome of the case.

It is your decision, after reviewing all the evidence, whether to accept the testimony of **[this/these]** witness**[es]** and to give to that testimony whatever weight, if any, you find it deserves.

Sand 7-16 (modified)

Redline of the Standard Instruction:

You have heard the testimony of ~~a law enforcement~~ FBI agent and/or official(s) of the Food and Drug Administration. The fact that a witness may be employed by the federal government as a ~~law enforcement~~ investigator or an official of a federal agency does not mean that his testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness.

At the same time, it is quite legitimate for defense counsel to try to attack the credibility

of such a law enforcement witness on the grounds that his or her testimony may be colored by a personal or professional interest in the outcome of the case.

It is your decision, after reviewing all the evidence, whether to accept the testimony of the law enforcement [this/these] witness[es] and to give to that testimony whatever weight, if any, you find it deserves.

CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2011, a copy of the foregoing THE PARTIES' JOINT PROPOSED JURY INSTRUCTIONS was electronically filed with the Court and served on defense counsel listed below via ECF:

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